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SRI LANKA

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## I. LAND AND PEOPLE

1. Sri Lanka is a multiracial and multi-religious nation and throughout many centuries the people of Sri Lanka of all races and religions have lived in peace and harmony with one another. According to the statistical pocket book issued by the Department of Census and Statistics for the year 1992 the total population of the island is 17.6 million. The composition of the population according to race and religion is as follows:

| Race | Percentage |
|---|---|
| Sinhalese | 74 |
| Sri Lanka Tamil | 13 |
| Indian Tamil | 6 |
| Sri Lanka Moor | 7 |
| Malays, Burghers and others | (negligible) |

| Religion | Percentage |
|---|---|
| Buddhists | 69.3 |
| Hindus | 15.5 |
| Muslims | 7.5 |
| Christians | 7.6 |
| Others | 0.1 |

These races entered the island at different times in the course of its history and contributed to form a single nation.

2. The Sinhalese are the descendants of immigrants from northern India who colonized the island around 500 B.C. Buddhism, the religion of the majority of Sinhalese, came from India in the third century B.C. The Sinhalese speak Sinhala.

3. The largest ethnic minority in the country, the Tamils, are immigrants from southern India who practise Hinduism and speak Tamil. They too came from early times, and made their home mostly in the northern part of Sri Lanka. The Tamil population was substantially increased with the arrival of Indian Tamils in the nineteenth and twentieth centuries as workers first in the coffee and later in the tea and rubber estates in the hill country during British colonial rule.

4. The Sri Lankan Moors are the descendants first of the nucleus of Arab settlers and the converts to Islam among the local population with whom they intermarried and secondly of Muslims of similar origin from across the Palk Strait who immigrated to the island with the outburst of Muslim commercial activity in South India in the thirteenth and fourteenth centuries and continued to come in a trickle up to more recent times.

5. The Malays, who form a distinct component of the Muslim community, came as soldiers and political exiles from Java, Sumatra and Malacca in the latter half of the seventeenth century when Sri Lanka was under Dutch rule.

6. The Ceylon Moors and Malays are of the Islamic faith.

7. The Burghers are descendants of European settlers many of whom intermarried with other ethnic groups. They generally speak English.

8. Thus Sri Lanka has from early times been a multi-ethnic society (a concept which emphasizes harmony and a spirit of live and let live) rather than a pluralist society (in which tension between ethnic or other distinctive groups is a main feature).

Socio-economic indicators

9. According to the latest available provisional estimates of the Registrar General, Sri Lanka's mid-year population in 1992 has been estimated at 17.6 million. This represents an increase of about 0.6 million since 1991 when the population was estimated at 17 million.

10. The distribution of the population by age is as follows:

| AGE | MALE | FEMALE | TOTAL |
|---|---|---|---|
| All | 8 762 | 8 455 | 17 247 |
| 0-14 | 3 092 | 2 978 | 6 070 |
| 15-19 | 944 | 918 | 1 862 |
| 20-24 | 890 | 884 | 1 774 |
| 25-34 | 1 403 | 1 386 | 2 789 |
| 35-44 | 908 | 877 | 1 785 |
| 45-54 | 690 | 645 | 1 335 |
| 55-59 | 258 | 233 | 491 |
| 60-64 | 213 | 183 | 396 |
| 65-69 | 155 | 138 | 293 |
| 70 + | 239 | 213 | 452 |

11. Due to the availability of free health facilities and their widespread utilization life expectancy among Sri Lankans rose from 42.8 years in 1946 to 71 years in 1989.

12. Infant mortality is around 19.3 per 1,000 live births and the maternal mortality rate is less than 0.4 per 1,000 births.

13. The fertility rate has dropped from 36.6 per 1,000 persons in 1945 to 21.3 in 1989. Among the factors responsible for falling birth rates were the rise in the age of marriage of females and the increased use of family planning methods.

14. The increase in life expectancy and the reduction in fertility have caused a gradual ageing of the population. The proportion of the population below the age of 15 was seen to have dropped while the proportion above the age of 60 years has risen during the last three decades. Yet Sri Lanka has a fairly young population with about 35.2 per cent estimated to be below the age of 15.

Under 15 - 35.194 per cent of total population

Male - 50.93 per cent
Female - 49.07 per cent

Over 65 - 4.319 per cent

Male - 52.8 per cent
Female - 47.2 per cent

15. According to the 1981 Census 78.5 per cent of the population lived in rural areas and 21.5 per cent lived in urban areas. Although the population density was high in the metropolitan area, the urban drift in Sri Lanka was relatively weak. Between the Census of 1971 and that of 1981 the proportion of population classified as urban in fact dropped slightly. Factors responsible for weakening the urban drift were opening of new lands following the extension of irrigation facilities, increasing employment opportunities in

the rural sector, the recent emphasis placed on provision of rural housing and the development of near-urban facilities in the spheres of housing and education, even in remote areas.

16. Sri Lanka enjoys a high level of literacy reflecting the emphasis placed on education. According to a survey of 1986/87 88.6 per cent of the population above the age of five was literate, while the literacy rate was 92.2 per cent for males and 85.2 per cent for females.

17. The dynamism of the Sri Lankan economy driven by high growth in response to liberalization policies and structural reforms continued in 1993.

18. The rise in national savings, surge in capital inflows induced partly by high interest rate differentials and a boom in the financial markets were also reasons for the surge in economic activity in 1993. Reflecting these developments GDP in real terms grew from 4.3 per cent in 1992 to 6.9 per cent in 1993.

19. GNP, which takes account of net factor income from abroad, grew at an impressive rate from 4.5 per cent to 7.6 per cent in 1993. Per capita GNP in current market prices increased from US$ 556 in 1992 to US$ 588 in 1993.

20. The rapid monetary growth resulting from high domestic credit expansion and large capital inflow was reflected in the higher inflation figure of 11.7 per cent in 1993 compared with 11.4 per cent in 1992.

21. Sri Lanka's external debt at the end of 1993 was estimated at SDR 5,548 million which was an increase of SDR 503 million. This increase in debt was equally shared by the Government and the private sector.

22. Unemployment, according to a Central Bank study of 1986/87, is around 15 per cent.

## II. GENERAL POLITICAL STRUCTURE

23. Sri Lanka gained political independence in 1948 after nearly 150 years of British rule. The year 1948 saw the birth of a parliamentary democracy crafted on the British model. The 1948 Constitution was an adopted version of the Westminster system.

24. Legislative power under the Constitution was vested in Parliament which consisted of the King, the House of Representatives and the Senate.

25. The executive power, which was vested in the King (British monarch), was to be exercised by the Governor General; however, since he was only the nominal head of State, executive power was in fact exercised by the Prime Minister and the Cabinet of Ministers who were responsible to the lower house of Parliament.

26. The Constitution did not create a new system of courts; however, certain provisions were made to ensure the independence and impartiality of the judiciary. The judiciary assumed to itself the power of judicial review of legislation.

27. Section 29(2) of the Constitution sought to protect minority rights by prohibiting legislation which was discriminatory in respect of any community or religion.

28. The Independence Constitution of 1948 was replaced in 1972 by the First Republican Constitution.

29. The Governor General (under the 1948 Constitution) was replaced by a President who performed much the same tasks. He was appointed by the Prime Minister and carried out the role of a ceremonial head of State. His powers were more restricted than those of his predecessor.

30. The legislative power was vested in the National State Assembly which was made a unicameral body, made up of the members of the existing House of Representatives.

31. The Prime Minister was appointed by the President and his/her powers depended on the support of a majority in the legislature. The power of review of legislation was taken away from the courts. However, the Constitution provided for the review of legislation at bill stage.

32. The Constitution also introduced some novel features, among them a chapter on Fundamental Rights and Freedoms. However, soon after the change of Government in 1977 the First Republican Constitution was replaced by the Second Republican Constitution. It introduced a presidential system of government and a series of safeguards for individual and minority rights.

The Executive President

33. Under the 1978 Constitution the head of the Government is the Executive President who is elected by the people for a term of six years, and cannot be elected for more than two terms. He is the head of State, the head of the executive and of the Government, and commander in chief of the armed forces. He has the power to declare war and make peace. He appoints the Prime Minister and all cabinet ministers and assigns portfolios to them.

34. The President together with the cabinet is collectively responsible and answerable to Parliament. However, he shall continue in office notwithstanding the dissolution of the cabinet. The President has the right to appoint secretaries and, in consultation with the cabinet of ministers, such other public officers who are necessary to assist him in the exercise, performance and the discharge of the powers, duties and functions of his office and to determine their terms and conditions of service.

35. The President has the power to initiate a referendum on any bill on any matter of national importance (arts. 85, 86).

36. The office of the President becomes vacant on his death, resignation, loss of citizenship, wilful failure to assume office within one month from the date of commencement of his office or if the Supreme Court determines that he must be removed from his office, for treason, bribery, misconduct, etc. (art. 38).

37. The President has the discretion to determine whether a proclamation of a state of emergency is necessary. However, the Constitution provides for parliamentary monitoring of emergency powers (arts. 155(1), (4)). A proclamation of emergency would lapse after a period of 14 days unless approved by Parliament.

38. The safeguards against the abuse of power by the President lie largely in the separation of executive, legislative and judicial powers.

The legislature

39. The Constitution vests the legislative power of the people in Parliament consisting of elected representatives of the people for a period of six years at a time. Parliament has the power to make laws, including laws repealing or amending the Constitution. However, certain provisions in the Constitution need the approval of the people at a referendum before they can be repealed or amended.

40. The President may from time to time summon, prorogue and dissolve Parliament. However, he cannot dissolve Parliament until a year has lapsed after the previous general elections.

The judiciary

41. The Constitution prescribes in article 105 that institutions for the administration of justice which protect and enforce the rights of the people, shall be the Supreme Court, the Court of Appeal, the High Court, and the other courts of first instance, tribunals or such institutions as Parliament may from time to time establish. The Supreme Court and the Court of Appeal are each a superior court of record.

42. Articles 107-117 of the Constitution contain provisions guaranteeing the independence of the judiciary. They provide, inter alia, for the appointment of the chief justice, the President of the Court of Appeal and every other judge of the Supreme Court and the Court of Appeal, by the President. Every such judge holds office during "good behaviour" and shall not be removed except by an order of the President, made after an address of Parliament, supported by the majority of the total number of the members of the Parliament, has been presented to the President for such removal on a finding of proved misbehaviour or incapacity.

## III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

43. The preamble to the Constitution of Sri Lanka assures to "all peoples, freedom, equality, justice, fundamental human rights, and the independence of the judiciary, as the intangible heritage that guarantees the dignity and well-being of succeeding generations of the People of Sri Lanka, and of all the people of the world" who strive for "the creation and preservation of a just and free society".

44. Articles 10 to 16 of the Constitution set out the fundamental rights which the people and citizens of Sri Lanka enjoy under constitutional protection. The Constitution is structured to promote and preserve the best

democratic features which have gained universal acceptance. Almost all the important rights enumerated in the International Bill of Human Rights have been incorporated in the Constitution in chapter III entitled "Fundamental rights".

| | | |
|---|---|---|
| Article 10 | : | Provides for freedom of thought, conscience and religion to every person in Sri Lanka. |
| Article 12 | : | Provides that all persons are equal before the law and entitled to equal protection under the law. |
| Article 12(3) | : | Provides that no person shall be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of worship of his own religion on grounds of race, religion, language, caste or sex. |
| Article 14 | : | Provides for the right of freedom of speech and expression including right to publication, freedom of peaceful assembly, freedom of association, freedom to form and join trade unions, freedom to manifest a person's religion or belief by practise, teaching, worship or observance, whether in public or private, freedom to promote a person's culture and language, freedom to engage in any profession, trade, occupation, business or enterprise, freedom of movement and residence within Sri Lanka and the right of return to Sri Lanka. |

45. Under the Constitution of Sri Lanka the Supreme Court has the sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental rights declared and recognized by the Constitution (arts. 17, 126). Furthermore, if in the course of any hearing the Court of Appeal, which is next to the Supreme Court in the hierarchy of courts, feels that fundamental rights have been violated, then the Court is required to refer forthwith the matter for determination by the Supreme Court.

46. Where any person alleges that any fundamental right has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, within one month, apply to the Supreme Court by way of a petition asking for relief or address in respect of such infringement. The Supreme Court is required to hear and finally dispose of any such petition within a period of two months upon its filing and is vested with the power to grant such relief or make such directions as it may deem just and equitable in the circumstances. The Court has held that its jurisdiction to grant relief is very wide and extensive.

47. The Constitution also empowers the Court of Appeal to issue writs of habeas corpus, mandamus, quo warranto, certiorari and procedendo. The

availability of such remedies acts as a powerful deterrent against the unbridled abuse and misuse of power by the State and its agencies.

Parliamentary Commissioner for Administration

48. The Constitution of Sri Lanka also provides that Parliament shall by law provide for the establishment of the Office of the Parliamentary Commissioner for Administration (Ombudsman), charged with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local authorities and other like institutions, in accordance with and subject to the provisions of such law.

49. The Parliamentary Commissioner for Administration Act No. 17 of 1981 established the Office of the Parliamentary Commissioner for Administration. Under the provisions of this Act, if the Committee of Parliament set up to consider petitions presented by members of Parliament is of the view that any petition presented to it by a member of Parliament discloses an infringement of a fundamental right or other injustice by a public officer or an officer of a public corporation, local authority or other like institution, it may refer such petition to the Commissioner for investigation and report.

50. Under the Parliamentary Commissioner for Administration Act No. 17 of 1981, when a petition is presented by the Public Petitions Committee of Parliament, the Parliamentary Commissioner will investigate the matter and upon the conclusion of the investigation, he will determine whether there has been or there is likely to be an infringement of a fundamental right or other injustice. The Commissioner will then report his determination together with his reasons to the Public Petitions Committee with a recommendation for appropriate relief. The Public Petitions Committee may, after consideration of a report made to it by the Commissioner, report to Parliament its opinion on the action to be taken.

51. Apart from the Constitution itself, there are other mechanisms which supplement the fundamental rights jurisprudence.

52. The object of the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights is to work towards the elimination of unlawful discrimination on grounds of race, religion, language, caste, sex, political opinion or place of birth, by the Government or a local authority or other public sector institution, and to monitor the observance of fundamental rights. The Commission is authorized to review and study all aspects of fundamental rights, to investigate complaints of alleged discrimination and endeavour to settle such complaints. Mediation and conciliation are the primary objectives of these hearings. During the period of a little more than four years of work the Commission and the Director of Human Rights appointed by the President have been able to bring about settlements in a large number of complaints of discrimination. The procedure before the Commission has been found to be an inexpensive, informal and expeditious means of settling complaints. Where settlement is not possible it is authorized to report the matter to H.E. the President of Sri Lanka.

53. The Commission of Inquiry Act No. 17 of 1948 provides for the appointment of commissions of inquiry into various matters. Presidential commissions of inquiry have been appointed under the terms of this act as and when significant human rights violations have been alleged to have been committed. Some recent Commissions are listed below:

(a) Commission of inquiry into ethnic disturbances of August to September 1977. The Commission was mandated to ascertain the circumstances and causes of such disturbances and the persons involved, and to recommend measures for future public safety;

(b) Commission on Youth. The Commission was mandated to examine causes of youth discontent, disquiet and unrest and to recommend remedial measures to discourage such attitude or conduct. Several of the Commission's recommendations are being implemented;

(c) Presidential Commission into Involuntary Removal of Persons. The Commission was mandated to inquire into complaints of alleged removal and/or subsequent lack of information on the whereabouts of such persons, the truth or otherwise of such allegations, the present whereabouts of such persons, their identities, steps to be taken against persons responsible, whether such illegal acts were due to defects in the present laws relating to law enforcement and remedial measures necessary to prevent future occurrences of any such illegal activities. This Commission is presently sitting;

(d) The Presidential Commission of Inquiry into the shooting of civilians at Kokkadhicholai in the Batticaloa district, allegedly by the security forces. The Commission has since submitted its report to the President. The Commission has held that the civilian deaths were not the result of any military action but were due to the unrestrained behaviour of some soldiers provoked by the death of two colleagues in a land-mine explosion. The Government has accepted the Commission's recommendation to pay compensation to the victims' families, to consider taking disciplinary action against the alleged offenders and to require military authorities to give clear instructions to soldiers to refrain from extra-military acts.

54. The cabinet in June 1994 approved the appointment of Citizens Rights Watch Committees to act as a link between the public and the police. They are specifically intended to:

(a) Look after the interests of members of the public in their dealings with the police;

(b) Act as a restraint against police excesses;

(c) Bring about greater cordiality in relations between the police and public, thereby mobilizing greater public cooperation with enforcers of the law.

55. The Committees will be appointed in all police divisions and their membership will be drawn from residents of good reputation and high social acceptance. Each will have a minimum of 5 and a maximum of 15 members serving in a purely voluntary basis for a period of 3 years.

56. The functions and responsibilities of the Committees would be to receive representations from the public in respect of inaction, delay or improper action or complaints made to the police and to mediate on behalf of members of the public with local police authorities so as to ensure a satisfactory response to the representations made.

57. The Human Rights Task Force was established as an independent institution to protect the rights of detainees and those held in custody otherwise than by a judicial order. The mandate of the HRTF is complementary to and supportive of other organizations dealing with the humanitarian concerns of persons under detention. It provides legal services to detainees by ensuring that lawyers and relatives are allowed scheduled visits. The detainees can make application to the Supreme Court to test the legality of their detention.

58. The work of the HRTF includes unrestricted and unannounced visits to all persons in detention.

59. Designated members of the armed forces and police are under instructions to inform HRTF promptly when an arrest is made. Members of the public can obtain information from a computer database in regard to any person in detention.

60. The Cabinet of Ministers has approved the preparation of draft legislation for the establishment of a human rights commission. The powers and objectives of the commission are as follows: to investigate complaints pertaining to the violation of fundamental rights and to resolve disputes through mediation and conciliation. It will have the power to design such programmes and plan such actions promoting the human rights and fundamental freedoms of minorities and disadvantaged groups and advise anybody - institution or person, governmental or non-governmental - regarding the incorporation of human rights norms in any legislation, subsidiary legislation, administrative practices or other document, code or practice.

61. In the area of dispute resolution, the Commission shall have the jurisdiction to inquire into any allegation regarding the infringement or imminent infringement by State action of fundamental rights at its own initiatives, or on receiving a complaint from the person aggrieved or a body of persons concerned with the protection of human rights acting bona fide.

62. There will be provision to enable the Supreme Court to refer to the commission such complaints pertaining to the violation of fundamental rights as they deem appropriate and, conversely, for the commission to refer allegations of a serious nature to the Supreme Court.

63. The review of legislation already in force and the consideration of amendment or enactment of new legislation in order to bring the legal system in accordance with international standards of human rights is undertaken by the Sri Lanka Law Commission. The Commission is charged with the general duty of keeping under review the law, both substantive and procedural with a view to its systematic development and reform, the codification of the law, the elimination of anomalies, the repeal of obsolete and unnecessary enactments and generally the simplification and modernization of the law. It is also the duty of the Commission to keep under constant review the exercise by bodies

other than Parliament of the power to legislate by subsidiary legislation with a view to ensuring that they conform to all established principles and to the rule of law. The programme of work of the Commission includes the enforcement of fundamental rights. The question of supplementing the existing legislation in the light of Sri Lanka's accession to international instruments relating to human rights is also considered by the Commission.

64. Sri Lanka has also afforded many opportunities to international human rights organizations such as Amnesty International to visit Sri Lanka in order to evaluate the observance of human rights in the country. Also for the same purposes, officials from countries such as the United States of America, Canada and the United Kingdom have visited the island. The International Committee of the Red Cross has been afforded facilities to operate in the north and east and in other areas stricken by civil disturbances. Sri Lanka has also recently afforded parliamentary teams from the commonwealth the opportunity of monitoring the conduct of presidential, parliamentary and local government elections.

## IV. INFORMATION AND PUBLICITY

65. The Sri Lanka Foundation was established by statute by the Government with the aim and object of protecting human rights, promotion of international understanding and cooperation and universal respect for the observance of human rights and fundamental freedoms for all without distinction.

66. The Human Rights Centre of the Foundation is directly involved in human rights education and dissemination of information. The Centre as early as 1983 together with the National Institute of Education introduced human rights concepts into the school curriculum. International agreements and covenants form part of the reference material. In addition to the formal education programme the Centre has also undertaken to introduce the World Council for curriculum and Instruction project on human rights to a number of selected schools in Sri Lanka. The programme envisages the improvement of awareness of human rights among schoolchildren.

67. The "Social justice through legal literacy" programme of the Centre holds seminars for adults - peasants, workers, women's groups and local council members - on the law and its procedures concerning problems encountered by these groups in their daily life. The Centre has also from time to time conducted seminars of the armed forces on the need to adhere to human rights norms. In a seminar conducted in April 1987 on "Law enforcement agencies and their role in the implementation of the International Bill of Human Rights", it sought to examine the manner in which the Universal Declaration of Human Rights and the 2 Covenants are applied in implementing the day-to-day work of government agencies. It also sought to acquaint law enforcement officials and professionals in current trends in international human rights practices.

68. In commemoration of the World Conference on Human Rights in Vienna in 1993, the Centre published a compilation of United Nations instruments on human rights in all these languages. This collection will serve as a valuable guide to which easy reference could be made. A project to promote human rights through the electronic media is also under way.

69. Apart from the efforts of the State a number of NGOs are involved in promoting awareness among the public and relevant authorities of international human rights norms.

70. The United Nations Information Centre in Sri Lanka serves as a focal point in the dissemination of United Nations-related information. Its responsibilities include maintaining a close relationship with the Government, ministries, research institutions and officials and responding to the different needs for information on the United Nations. The UNIC also assists the press and broadcasting media in producing news about the United Nations. It also works closely with the education system providing supplementary material to help in teaching about the United Nations system. It also organizes seminars and workshops for master teachers and students. Its reference library is a source of United Nations official documents and is open to the public and researchers.

71. The United Nations Association of Sri Lanka has published Sinhala and Tamil versions of the Charter of the United Nations which is now being circulated to all public libraries and high school libraries, universities and libraries of institutions.

72. The International Committee of the Red Cross in Sri Lanka conducts lectures for the armed forces on international humanitarian law and the law of war.

73. The Centre for the Study of Human Rights of the University of Colombo, which has been in operation since October 1991, works closely with local and international NGOs and educational institutions to design and facilitate human rights education and research. The Centre is in the process of translating important human rights documents into Sinhala and Tamil as most of the literature is only available in English. The pilot project on human rights education for the armed forces and police undertaken by the Centre hopes to sensitize service personnel to human rights issues. The Centre initiated a Human Rights Outreach Education Project for the community which promotes human rights awareness in a manner which integrates human rights into the thinking process of the participants.

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